

Office of the State Appellate Defender
Illinois Criminal Law Digest

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TABLE OF CONTENTS

<u>APPEAL</u>	1
<u>BURGLARY</u>	2
<u>COLLATERAL REMEDIES</u>	3
<u>CONFESSIONS</u>	4
<u>COUNSEL</u>	6
<u>DOUBLE JEOPARDY</u>	7
<u>EVIDENCE</u>	8
<u>JURY</u>	10
<u>PROBATION</u>	11
<u>SENTENCING</u>	12
<u>UNLAWFUL USE OF WEAPONS</u>	13
<u>WAIVER - PLAIN ERROR - HARMLESS ERROR</u>	14

TABLE OF AUTHORITIES

Illinois Appellate Court

People v. Bartholomew.....	6
People v. Bowen.....	4
People v. Coleman.....	5
People v. Crabtree.....	11
People v. Hollahan.....	10
People v. Jackson.	7
People v. Kines.....	1, 8
People v. Melvin.....	12
People v. Mueller.....	10, 14
People v. Rankin.	2
People v. Robinson.	3
People v. Smith.....	13
People v. Stavenger.....	3

APPEAL

§2-6(e)

People v. Kines, 2015 IL App (2d) 140518 (No. 2-14-0518, 7/24/15)

1. Defendant was convicted of a 1988 first degree murder based on being accountable for strangling the victim with the sleeve of a blouse. Defendant was identified as being one of three offenders by an 11-year old acquaintance. At trial, defendant denied being involved.

In 2002, defendant filed an initial petition for DNA testing of the blouse sleeve, the victim's clothing and other evidence recovered at the scene pursuant to 725 ILCS 5/116-3. At that time, the DNA testing statute required defendant to show that the requested testing was not available at the time of trial. 116-3(a). The trial court denied defendant's petition on the basis that the requested testing had been available at the time of trial, and the Appellate Court affirmed.

Defendant filed a second petition for DNA testing in 2013. By this time, the DNA testing statute had been amended to only require defendant to show that the evidence was not subject to the testing now requested. 116-3(a)(1). The trial court nevertheless denied defendant's second petition finding in part that it was barred by *res judicata*.

2. The Appellate Court held that defendant's second petition was not barred by *res judicata*. *Res judicata* is an equitable doctrine that bars relitigation of issues that were raised and adjudicated, or could have been raised and adjudicated, in a prior proceeding. But *res judicata* is "first and foremost an equitable doctrine which may be relaxed where justice requires." A well-established exception to the doctrine exists where the earlier judgment was "plainly inconsistent with the equitable implementation of a statutory scheme."

The statutory scheme here, 116-3(a), had changed in a dispositive manner between the first and second petitions. The statute applicable to the first petition required a showing that the testing procedures were unavailable at the time of trial, a showing defendant could not make. The statute applicable to the second petition merely required a showing that the evidence had not been previously subject to the testing procedures, a showing defendant could make. Given the change in the statute, the court declined to hold that the earlier decision constituted a *res judicata* bar against filing the second petition.

BURGLARY

§8-1(b)

People v. Rankin, 2015 IL App (1st) 133409 (1-13-3409, 7/16/15)

1. To obtain a conviction for residential burglary, the State must prove beyond a reasonable doubt that the defendant knowingly and without authority entered the dwelling of another with intent to commit a felony or theft. The court concluded that the evidence in this case was insufficient to sustain a residential burglary conviction.

The only evidence against defendant was testimony by a person who lived in an apartment that as he drove past his building, he saw defendant carrying clothes in a gangway on the side of the building where the entrance to the witness's apartment was located. Approximately six hours later, the witness returned to his apartment and found that it had been broken into and that all of his clothes were missing. The witness stated that he had known defendant all of his life and recognized him coming out of the gangway. However, he did not inform police of defendant's identity for some two-and-a-half weeks after he was first interviewed because he was "going to deal with the situation himself."

The court noted that the witness testified that he saw the defendant coming out of the gangway, not out of the witness's apartment, and did not testify that he recognized any of the clothes defendant was carrying as being his property. In addition, although the police were called immediately, there was no evidence that defendant's fingerprints were found at the scene. Furthermore, there was no evidence that any of the clothes taken from the witness's apartment were found in defendant's possession.

The court stressed that the only evidence even remotely connecting defendant to the alleged burglary was the witness's uncorroborated testimony that he saw the defendant in the gangway carrying clothes and later found that his apartment had been burglarized and his clothes stolen. Because there was no evidence that defendant entered the witness's apartment, took the witness's clothes, or had possession of those clothes, there was no basis to find that the elements of residential burglary had been proven beyond a reasonable doubt.

(Defendant was represented by Assistant Defender Rebecca Levy, Chicago.)

COLLATERAL REMEDIES

§9-1(b)(1)

People v. Stavenger, 2015 IL App (2d) 140885 (No. 2-14-0885, 7/9/15)

To have standing to file a post-conviction petition, a defendant must be “imprisoned in the penitentiary.” 725 ILCS 5/122-1(a). A defendant on probation satisfies this standing requirement, but the act is unavailable to defendants who have completely served their sentences and merely wish to purge their criminal convictions.

The Appellate Court held that defendant, who had served his entire sentence but was required to register as a sex offender, did not have standing to file a post-conviction petition. The requirement to register imposes no actual restraint on defendant’s liberty and is merely a collateral consequence of his conviction. The dismissal of defendant’s petition was affirmed.

§§9-1(b)(2), 9-1(b)(3)

People v. Robinson, 2015 IL App (4th) 130815 (No. 4-13-0815, 7/16/15)

1. Under the current version of the post-conviction hearing act, a defendant who files a direct appeal but not a certiorari petition must file his post-conviction petition within six months “from the date for filing a certiorari petition,” unless he alleges facts showing the delay was not due to his culpable negligence. 725 ILCS 5/122-1(c).

2. Defendant’s conviction and sentence were affirmed on direct appeal on February 11, 2009. Defendant did not file a petition for leave to appeal. Defendant filed his post-conviction petition on July 26, 2010. At the second stage, the court granted the State’s motion to dismiss the petition on the ground of untimeliness.

On appeal, both parties agreed that the petition was not timely filed, but defendant argued that the delay was not due to his culpable negligence since appellate counsel failed to notify defendant when the direct appeal decision was issued. Neither party discussed the operation of section 122-1(c), simply assuming that the petition was untimely.

3. The Appellate Court held that before it could determine whether the delay was due to defendant’s culpable negligence, it had to determine what the correct due date was under 122-1(c). The Court agreed that defendant’s petition had to be filed within six months from the date for filing cert, but the date for filing cert depends on the date leave to appeal was denied. The United States Supreme Court only has subject-matter jurisdiction to review a judgement of an Appellate Court if the state Supreme Court declined to review the judgment. And United States Supreme Court Rule 13(1) states

that a cert petition is due within 90 days after entry of the order denying discretionary review.

Since defendant never filed leave to appeal, the Appellate Court found it impossible to calculate the date his cert petition was due and hence impossible to determine the due date for filing his post-conviction petition. Without knowing the due date, the “excuse for lateness lacks a legal context,” and the Court could not determine whether the delay was due to culpable negligence.

The second-stage dismissal of defendant’s petition was affirmed.

(Defendant was represented by Assistant Defender Susan Wilham, Springfield.)

CONFESSIONS

§10-3(c)

People v. Bowen, 2015 IL App (1st) 132046 (No. 1-13-2046, 7/31/15)

1. Custodial interrogation for **Miranda** purposes involves questioning initiated by police after a person has been taken into custody or otherwise deprived of his freedom in any significant way. Custody is a term of art that refers to circumstances that present a serious danger of coercion. The first step in determining whether a person was in custody is to objectively ascertain whether a reasonable person would have felt free to terminate the interrogation and leave.

Courts have repeatedly rejected the idea that any interrogation of an inmate in a penal institution constitutes custodial interrogation. Instead courts must examine all the circumstances surrounding the interrogation and decide whether they present the same inherently coercive pressures as those found in **Miranda**. Thus an inmate is in custody only when the totality of circumstances would lead a reasonable inmate to believe that his liberty was limited beyond the usual conditions of his confinement.

2. A correctional officer conducted a “shakedown” of two tiers in Cook County Jail. During a “shakedown,” the officer removes the prisoners from their cells, secures them, pats them down, and then checks their cell for contraband. The officer removed defendant and his cellmate from their cell, handcuffed and patted them down, then searched the cell, eventually discovering a shank. The officer asked the two cellmates who the shank belonged to and defendant said that it was his.

3. The court held that defendant was not in custody when the officer questioned him about the shank and thus **Miranda** warnings were not required. Defendant was removed from his cell, handcuffed, and patted down as part of a routine search of his cell. After discovering the shank, the officer engaged in very brief questioning about

who the shank belonged to. Nothing in these circumstances “presented the same inherently coercive pressures as the type of station house questioning at issue in **Miranda**.”

Since a motion to suppress based on the failure to give **Miranda** warnings had no reasonable probability of success, trial counsel was not ineffective for failing to file a motion to suppress.

(Defendant was represented by Assistant Defender Todd McHenry, Chicago.)

§10-3(c)

People v. Coleman, 2015 IL App (4th) 140730 (No. 4-14-0730, 7/20/15)

1. To determine whether a defendant is in custody for **Miranda** purposes, courts look at the circumstances surrounding the interrogation and determine as an objective matter whether a reasonable innocent person would have felt at liberty to terminate the interrogation and leave. Courts utilize the following factors in making this determination: (1) location, time, length, mood and mode of the questioning; (2) number of police officers present; (3) presence of defendant’s family and friends; (4) indicia of formal arrest, such as show of weapons or force, physical restraint, booking, or fingerprinting; (5) how defendant arrived at the place of questioning; (6) age, intelligence, and mental makeup of defendant.

2. Two parole officers visited defendant’s home to conduct a “compliance check” on defendant. The officers suspected defendant had been dealing drugs based on information they received prior to the compliance check. Both officers carried weapons, but were not general criminal investigators. If they discovered evidence of a new crime they contacted the local police. It was standard procedure to handcuff parolees during compliance checks, but the officers never gave **Miranda** warnings during these checks.

The officers separated defendant from his mother and sister, who were in another room. They obtained a urine sample from defendant and searched his bedroom. They found a locked box in the bedroom which contained a large amount of money. After finding the money, the officers handcuffed defendant behind his back. They then questioned defendant about the money and selling marijuana. In response, defendant admitted he had marijuana under his mother’s bed, which the officers recovered.

Defendant specifically testified that he believed he was free to leave during the questioning, despite being handcuffed, because he “hadn’t done anything wrong.”

3. The Appellate Court held that defendant’s statements were properly suppressed because the officers had not given him **Miranda** warnings. The court first held that

although defendant was on parole, he still retained his Fifth Amendment rights, including the right to **Miranda** warning prior to custodial interrogation.

The court also found that defendant was in custody when the officers questioned him. Although the court discussed all of the relevant factors in determining custody, it found dispositive the fact that defendant was handcuffed after the officers found the large amount of money. When a law enforcement officer handcuffs an individual, the officer is “making a show of force and physically restraining” that person, actions “indicative of arrest.” A reasonable person in this position would not “feel free to leave until the handcuffs are removed.” Additionally, since defendant was handcuffed after the officers found the large amount of money, a reasonable person would have believed that the “parole visit had morphed into an arrest.”

The court found that defendant’s testimony that he subjectively believed he was free to leave was “irrelevant” to the **Miranda** question, which solely requires an objective determination of whether a reasonable person would feel free to leave.

The trial court’s order suppressing defendant’s statement was affirmed.

4. The dissenting justice would have found that because defendant subjectively believed he was free to leave, he was not subjected to custodial interrogation and **Miranda** warnings were not required.

(Defendant was represented by former Assistant Defender Duane Schuster, Springfield.)

COUNSEL

§13-2

People v. Bartholomew, 2015 IL App (4th) 130575 (No. 4-13-0575, 7/7/15)

The Appellate Court found that defendant’s waiver of counsel was ineffective because the trial court failed to substantially comply with Supreme Court Rule 401(a).

1. Rule 401(a) provides that any waiver of counsel must be made in open court. Before a waiver can be accepted, the trial court must address the defendant and determine that he understands the nature of the charge, the minimum and maximum sentences, and that he has the right to counsel and to appointed counsel if he is indigent. The purpose of Rule 401(a) is to ensure that a waiver of counsel is knowingly and intelligently made.

Rule 401(a) admonishments must be provided when the court learns that the defendant wishes to waive counsel so that defendant can consider the ramifications of his decision. Prior admonishments, if any, are insufficient to comply with Rule 401(a).

2. At his jury trial, defendant was represented by an assistant public defender. After the State rested, defendant announced that he wanted to proceed *pro se*. The trial court stated that it was required to determine whether defendant was capable of making a knowing and intelligent waiver of his right to counsel, and asked a series of question regarding defendant's age, education level, mental health, and experience with legal proceedings. The court also informed defendant that he would be held to the same standards as an attorney. Defendant then represented himself for the rest of the trial.

The court concluded that because the trial judge failed to address any of the three elements required by Rule 401(a) before allowing the defendant to proceed *pro se*, the waiver was invalid. The conviction was reversed and the cause remanded for a new trial.

(Defendant was represented by Assistant Defender John McCarthy, Springfield.)

DOUBLE JEOPARDY

§§17-1, 17-5

People v. Jackson, 2015 IL App (1st) 123695 (No. 1-12-3695, 7/27/15)

In a bench trial, defendant was found guilty of first degree murder, but mentally ill. On appeal, the Appellate Court reversed the conviction and remanded for a new trial because the trial court abandoned its role as a neutral arbiter by adopting a prosecutorial role when questioning an expert witness and by relying on matters based on private knowledge that was outside the record. On remand, defendant argued that double jeopardy and collateral estoppel principles limited the State to seeking a finding of guilty but mentally ill. The trial court rejected defendant's argument, and he filed an interlocutory appeal.

The Appellate Court rejected defendant's argument.

1. The double jeopardy clauses of the United States and Illinois constitutions prohibit placing a person twice in jeopardy for the same offense. Double jeopardy principles prohibit a retrial for the purpose of affording the prosecution an opportunity to supply evidence which it failed to produce in the first proceeding.

Thus, where the evidence at trial was insufficient to sustain a conviction, the State is barred by double jeopardy from retrying the defendant. However, double jeopardy does not prohibit the retrial of a defendant whose conviction is set aside because of an

error in the proceedings leading to the conviction. The court noted that in his initial appeal defendant did not challenge the sufficiency of the evidence.

A criminal defendant who raises an insanity defense and who is found guilty of the offense beyond a reasonable doubt, but who fails to prove that he was insane, may be found guilty but mentally ill if he proves by a preponderance of the evidence that he had a mental illness. A person found guilty but mentally ill is subject to any sentence which could have been imposed on a defendant convicted of the same offense without a finding of mental illness. However, DOC is required to make periodic examinations and provide adequate treatment of defendant's mental illness. In other words, an offender found guilty but mentally ill is no less guilty than one who is simply found guilty, but DOC has additional responsibilities concerning the mental illness.

The court concluded that where the first conviction was reversed based on trial errors and not due to insufficiency of evidence, the double jeopardy clause does not preclude the State from seeking a guilty verdict on retrial.

2. The doctrine of collateral estoppel precludes relitigation of issues that were resolved in an earlier case. The doctrine applies when: (1) a party participates in two separate proceedings arising on different causes of action, and (2) some controlling fact or question material to the determination of both causes was adjudicated against that party in the former case. The collateral estoppel doctrine applies only where a final judgment was rendered in the prior case, the party against whom estoppel is asserted was a party or in privity with a party in the prior case, and the issue decided in the prior case was identical to the issue presented in the instant case.

The court concluded that the doctrine of collateral estoppel does not apply here because there was only one cause of action - the murder of a particular person - and because the prosecution is ongoing and there has not been a final adjudication on the merits.

EVIDENCE

§19-27(h)

People v. Kines, 2015 IL App (2d) 140518 (No. 2-14-0518, 7/24/15)

1. Defendant was convicted of a 1988 first degree murder based on being accountable for strangling the victim with the sleeve of a blouse. Defendant was identified as being one of three offenders by an 11-year old acquaintance. At trial, defendant denied being involved.

In 2002, defendant filed an initial petition for DNA testing of the blouse sleeve, the victim's clothing and other evidence recovered at the scene pursuant to 725 ILCS

5/116-3. At that time, the DNA testing statute required defendant to show that the requested testing was not available at the time of trial. 116-3(a). The trial court denied defendant's petition on the basis that the requested testing had been available at the time of trial, and the Appellate Court affirmed.

Defendant filed a second petition for DNA testing in 2013. By this time, the DNA testing statute had been amended to only require defendant to show that the evidence was not subject to the testing now requested. 116-3(a)(1). The statute also required defendant to make a *prima facie* showing that identity was an issue at trial and the evidence tested was subject to a chain of custody. 116-3(b). The court must allow testing if the testing procedure is generally accepted in the scientific community and the "result of testing has the scientific potential to produce new, non-cumulative evidence materially relevant to defendant's actual innocence even though the result may not completely exonerate him." 116-3(c).

The trial court denied defendant's second petition finding that it was (1) barred by *res judicata* and (2) even if another person's DNA were found on the evidence, "it would not change the evidence indicating" defendant's guilt.

2. The Appellate Court held that defendant's second petition was not barred by *res judicata*. *Res judicata* is an equitable doctrine that bars relitigation of issues that were raised and adjudicated, or could have been raised and adjudicated, in a prior proceeding. But *res judicata* is "first and foremost an equitable doctrine which may be relaxed where justice requires." A well-established exception to the doctrine exists where the earlier judgment was "plainly inconsistent with the equitable implementation of a statutory scheme."

The statutory scheme here, 116-3(a), had changed in a dispositive manner between the first and second petitions. The statute applicable to the first petition required a showing that the testing procedures were unavailable at the time of trial, a showing defendant could not make. The statute applicable to the second petition merely required a showing that the evidence had not been previously subject to the testing procedures, a showing defendant could make. Given the change in the statute, the court declined to hold that the earlier decision constituted a *res judicata* bar against filing the second petition.

3. The court also found that defendant presented a *prima facie* case that identity was an issue at trial and the evidence was subject to a chain of custody to ensure its integrity. 116-3(b). At trial defendant argued that he was mistakenly identified as one of the perpetrators, making identity an issue. And defendant was excused from establishing a chain of custody since the evidence was admitted at his trial and presumably "would have remained within the custody of the circuit court clerk."

And finally the court found that the DNA testing is generally accepted within the scientific community and has the potential to produce new, noncumulative evidence materially relevant to defendant's claim of actual innocence. 116-3(c). Evidence is

materially relevant if it tends to significantly advance a claim, and need not completely exonerate defendant.

The State's primary evidence came from the witness who identified defendant and he made inconsistent statements to the police. The court found that it could not "dismiss the very real possibility that DNA testing might result in a viable third-party suspect," and thus significantly advance defendant's claim of innocence even if it did not completely exonerate him.

The cause was remanded for DNA testing.

JURY

§§32-3(a), 32-3(b)

People v. Hollahan, 2015 IL App (3rd) 130525 (No. 3-13-0525, mod. op. 7/16/15)

Generally, when a judgment is vacated or reversed either on appeal or in the trial court and a new trial is ordered, the defendant's right to a jury trial is restored for the new trial. As a matter of first impression, the Appellate Court held that the general rule does not apply where the defendant enters a jury waiver that is not part of a plea agreement, subsequently pleads guilty, and is then granted leave to withdraw the plea. Thus, defendant was properly tried in a bench trial where he waived a jury about a month before he entered a guilty plea and was subsequently granted leave to withdraw the plea.

(Defendant was represented by Assistant Defender Santiago Durango, Ottawa.)

§32-4(a)

People v. Mueller, 2015 IL App (5th) 130013 (No. 5-13-0013, 7/17/15)

The trial court violated Supreme Court Rule 431(b) by failing to properly voir dire the potential jurors about the four **Zehr** principles. The court asked if the potential jurors *understood* that defendant was presumed innocent, did not have to present any evidence, and that his failure to testify could not be used against him. But the court never asked the jurors if they *accepted* any of these principles. The court also asked the potential jurors if they would require the State to prove defendant guilty beyond a reasonable doubt, but did not ask if they understood this principle.

Although defendant failed to object to the court's voir dire, the Appellate Court addressed the issue as plain error since the evidence was closely balanced. Reversed and remanded for a new trial.

(Defendant was represented by Assistant Defender Chris Kopacz, Chicago.)

PROBATION

§§40-4(a), 40-4(b)

People v. Crabtree, 2015 IL App (5th) 130155 (No. 5-13-0155, 7/30/15)

1. A condition of probation is permissible if there is some connection between the condition and the underlying offense. In evaluating whether a probation condition is constitutional, courts consider whether: (1) the condition reasonably relates to the intended purpose of fostering rehabilitation, (2) the value to the public of imposing the condition manifestly outweighs any impairment of the probationer's constitutional rights, and (3) there are alternative means that are less damaging to the probationer's constitutional rights but which would satisfy the purposes of placing the defendant on probation.

2. 730 ILCS 5/5-6-3(a)(8.7), (8.9), and (11) provide that where the defendant is convicted of certain sexual offenses and receives probation, the conditions of probation "shall" include that defendant refrain from communicating with or contacting by means of the Internet any unrelated person whom the defendant reasonably believes to be under 18 years of age, refrain from accessing or using a social networking website, and refrain from using "scrub" software on any computer. The court noted that these conditions are mandatory and are not unconstitutional in this case although defendant did not use a computer to commit the offense for which a probation term was ordered. Because defendant was sentenced for the sexual abuse of a young girl, the court concluded that probation conditions limiting the use of computers, the Internet, and social networking web sites were reasonably related to the goals of deterrence, protection of the public, and defendant's rehabilitation.

(Defendant was represented by Assistant Defender Allen Andrews, Springfield.)

SENTENCING

§45-5

People v. Melvin, 2015 IL App (2d) 131005 (No. 2-13-1005, 7/16/15)

1. A double enhancement occurs when a factor is used to enhance an offense or penalty and is then used again to subject the defendant to an additional enhanced offense or penalty. Here, defendant pleaded guilty to attempt predatory criminal sexual assault of a child, a Class 1 offense, but was eligible for a Class X sentence of six to 30 years under 730 ILCS 5/5-5-3(c)(8), which at the time of the offense provided a Class X sentence where a defendant was convicted of a Class 1 or 2 felony after having been twice convicted of a Class 2 or greater felony.

However, as part of the negotiated plea agreement the parties agreed to an extended term Class X sentence of 60 years based on the fact that one of the prior offenses used to authorize a Class X sentence under 5/5-5-3(c)(8) was itself a Class X felony. Under 730 ILCS 5/5-5-3.2(b)(1), an extended term is authorized where a felon has been convicted of the same or greater class felony within the last 10 years.

Thus, a single prior Class X conviction was used to both authorize a Class X sentence of six to 30 years on defendant's Class 1 conviction and to authorize a Class X extended term. The court found that under these circumstances, an impermissible double enhancement occurred. Because the 60-year extended term included in the plea agreement was unauthorized, the sentence was void and could be challenged in an appeal from a denial of a motion for leave to file a subsequent post-conviction petition.

2. The court stressed that a trial court lacks authority to impose an unauthorized sentence even if the parties agree to it. The court also found that the rule against double enhancement applies where the sentence is enhanced twice by the same factor and not just where the factor is used to enhance the offense and also used to enhance the punishment.

The court vacated the entire plea agreement, finding that it could not merely reduce the sentence to 30 years without essentially altering an essential provision of the plea agreement. The court remanded the cause with instructions that defendant could plead anew, but stated that if the State wished to accept defendant's offer to persist in his guilty plea and accept a 30-year sentence, it could file a petition for rehearing to that effect and the Appellate Court would enter a new judgment without remand.

(Defendant was represented by Assistant Defender Paul Rogers, Elgin.)

UNLAWFUL USE OF WEAPONS

§53-3

People v. Smith, 2015 IL App (1st) 132176 (No. 1-13-2176, 7/15/15)

1. To sustain a conviction for aggravated unlawful use of a weapon by a person under the age of 21, the State must prove that a person who was under 21 knowingly carried or concealed a firearm on or about his person or in a vehicle at a time when he was not involved in certain lawful activities under the Wildlife Code. “Knowing possession” may be either actual or constructive. The State establishes constructive possession by demonstrating that the defendant knew of the weapon’s presence and exercised control over the area where it was found.

Knowledge is usually established by circumstantial evidence. A person who has the intent and capability to maintain control and dominion over an item satisfies the intent element of constructive possession even if he lacks present personal dominion over the object.

2. The State offered sufficient circumstantial evidence for a rational trier of fact to conclude that defendant had constructive possession of a gun that was found in a bag that was left on a bus after all passengers had disembarked. Not only did the driver state that defendant claimed ownership, but the fact that defendant approached the driver just after the latter exited the bus with the bag supported an inference that defendant hoped to regain control over the bag. In addition, the bag was found in the last row, where defendant had been sitting, and was unzipped so that the handle of a pistol was visible. Finally, defendant’s statement to the driver that the bag contained a BB gun created a reasonable inference of knowing possession because defendant had not been shown the contents of the bag but claimed to know what it contained.

The court also noted that the trial court’s ruling relied on its findings concerning witness credibility, and that a court of review may not substitute its judgment on credibility for that of the trier of fact.

Defendant’s conviction for aggravated unlawful use of a weapon was affirmed.

(Defendant was represented by Assistant Defender Arianne Stein, Chicago.)

WAIVER - PLAIN ERROR - HARMLESS ERROR

§56-2(b)(6)(a)

People v. Mueller, 2015 IL App (5th) 130013 (No. 5-13-0013, 7/17/15)

The trial court violated Supreme Court Rule 431(b) by failing to properly voir dire the potential jurors about the four **Zehr** principles. The court asked if the potential jurors *understood* that defendant was presumed innocent, did not have to present any evidence, and that his failure to testify could not be used against him. But the court never asked the jurors if they *accepted* any of these principles. The court also asked the potential jurors if they would require the State to prove defendant guilty beyond a reasonable doubt, but did not ask if they understood this principle.

Although defendant failed to object to the court's voir dire, the Appellate Court addressed the issue as plain error since the evidence was closely balanced. Reversed and remanded for a new trial.

(Defendant was represented by Assistant Defender Chris Kopacz, Chicago.)